STATE OF MICHIGAN

COURT OF APPEALS

CHAD M. LUDEMA,

Plaintiff/Counterdefendant-Appellee,

v

RACHELLE RENEE LUDEMA,

Defendant/Counterplaintiff-Appellant.

UNPUBLISHED
January 14, 2003

No. 242558
Allegan Circuit Court
LC No. 00-27338-DM

Before: Meter, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right from the judgment of divorce granting plaintiff sole physical custody of their two minor children. We affirm.

Defendant first claims that the trial court committed clear legal error by failing to determine whether an established custodial environment existed with one or both parties, and by failing to apply any evidentiary standard to its findings on the best interest factors. The Child Custody Act provides that questions of law are reviewed for clear legal error. *Fletcher v Fletcher*, 447 Mich 871, 881; 526 NW2d 889 (1994). "When a court incorrectly chooses, interprets, or applies the law, it commits clear legal error that the appellate court is bound to correct." *Id*.

MCL 722.27(1)(c) states in relevant part:

> The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child. The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered.

Although it is true that the trial court failed to articulate a determination regarding whether an established custodial environment existed, as well as failed to state an evidentiary standard at trial, the trial court later clarified the standard it applied at a hearing on a motion for stay of the judgment of divorce. With regard to the evidentiary standard it applied, the court stated:

> Well, I can't tell you at this time whether or not I specifically stated on the record whether I thought the evidence was clear and convincing, but I believe I was cognizant of the fact that that was the proper standard and I did think it was clear and convincing for a change.

By stating that it applied the clear and convincing standard in awarding plaintiff sole physical custody of the children, the trial court implied that it had found the existence of an established custodial environment, either with both parents, or with defendant. We find that the trial court did not commit clear legal error, because it correctly chose, interpreted, and applied the clear and convincing evidentiary standard when it determined that it was in the best interests of the children to change the established custodial environment, and thus awarded physical custody to plaintiff.

Defendant next argues that the trial court committed clear legal error by failing to make findings on the best interest factors (g) and (j)[1]. We have consistently held that "when deciding a custody matter the trial court must evaluate each of the factors contained in the Child Custody Act, MCL 722.23 [], and state a conclusion on each, thereby determining the best interests of the child." *Arndt v Kasem*, 135 Mich App 252, 255; 353 NW2d 497 (1984), citing *Speers v Speers*, 108 Mich App 543; 310 NW2d 455 (1981); see also *Schubring v Schubring*, 190 Mich App 468, 470; 476 NW2d 434 (1991).

The trial court did not state a finding for factor (j), the willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents. We agree that the trial court's failure to state findings on this factor was error. However, having reviewed the record, we are convinced that any error was harmless. *Winn v Winn*, 234 Mich App 255, 260 n 4; 593 NW2d 662 (1994), citing *Fletcher, supra* at 889.

Factor (j) was not emphasized by the parties as determinative of custody at trial and no evidence in the record convinces us that the factors bear on the ultimate issue of custody to alter the court's decision to grant physical custody to plaintiff. Moreover, in arguing this specific issue on appeal, defendant fails to discuss the import of this factor or to show that she was prejudiced by the error. Thus, we are convinced that the court's omission was harmless, making remand unnecessary.[2] See *Fletcher, supra* at 889; *Winn, supra* at 260 n 4.

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[1] Appellant conceded at oral argument that the trial court made a finding as to factor (g).

[2] We recognize that prior decisions of this Court have stated that a court's failure to make specific findings on each best interest factor is reversible error." *Schubring, supra* at 470; *Arndt, supra* at 255, citing *Currey v Currey*, 109 Mich App 111; 310 NW2d 913 (1981). However, in accordance with the review standard for child custody cases, all orders and judgments of the circuit court shall be affirmed on appeal unless the trial judge made findings of fact against the

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Defendant next argues that the trial court erred and abused its discretion by determining that plaintiff was favored under certain best interest factors, and by failing to determine that she was favored under other factors. All custody orders must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue. MCL 722.28, *Fletcher, supra* at 876-877 (Brickley, J.), 900 (Griffin, J.); 526 NW2d 889 (1994); *York v Morofsky*, 225 Mich App 333, 335; 571 NW2d 524 (1997).

Upon review of the record, we affirm the trial court's findings as to each custody factor that it considered, because the evidence does not clearly preponderate in the opposite direction. *Fletcher, supra* at 879 (Brickley, J.), 900 (Griffin, J.). None of the trial court's findings were against the great weight of the evidence. *Id*. We find that apart from failing to make findings regarding two of the factors, the trial court did not commit clear legal error in its analysis of the best interest factors.

Affirmed.

/s/ Patrick M. Meter
/s/ Janet T. Neff
/s/ Pat M. Donofrio

(…continued)

great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue. MCL 722.28; *Fletcher, supra* at 876-877, 889. As the Supreme Court observed in *Fletcher*, "upon a finding of error an appellate court should remand the case for reevaluation, *unless the error was harmless*." *Id*. at 889 (emphasis added).